



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2013-0064

RIN 1625-AA11

Regulated Navigation Area, Gulf of Mexico: Mississippi Canyon

Block 20, South of New Orleans, LA

AGENCY: Coast Guard, DHS.

ACTION: Final Rule

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SUMMARY: The Coast Guard is establishing a Regulated Navigation Area (RNA) in the Mississippi Canyon Block 20 in the Gulf of Mexico. This RNA is needed to protect the subsurface monitoring and collection dome system above a leaking wellhead from the potential hazards of vessels anchoring, mooring, fishing or loitering in or near the oil and gas discharge area. Deviation from this rule is prohibited unless specifically authorized by the Captain of the Port New Orleans, or his designated representative.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Documents mentioned in this preamble are part of docket USCG-2013-0064. To view documents mentioned in this preamble as being available in the docket, go to

<http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Lieutenant Commander (LCDR) Brandon Sullivan, Coast Guard Sector New Orleans; telephone 504-365-2281, email Brandon.J.Sullivan@uscg.mil. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

#### A. Regulatory History and Information

On September 16, 2004, a mudslide resulted from Hurricane Ivan's storm surge that toppled the Mississippi Canyon (MC) 20 Platform A. The platform's wells were covered by more than 100-feet of mud and sediment. As a result of structural damage, plumes containing crude oil and gas have been discharging into the Gulf of Mexico, creating a sheen on the surface of the water.

The Responsible Party for this incident has undertaken an operation to install a containment dome over the affected area, which would catch the oil rising from the seabed. Anchoring, mooring, fishing, or otherwise loitering in the area above the containment dome could potentially cause structural damage and failure to the containment dome, wellheads, well piping system and closure valves, which would reduce the dome's effectiveness and potentially release oil and gas into the Gulf of Mexico. Therefore, regulating navigation in this area is necessary to protect the collection and subsurface monitoring system and to reduce the potentially negative impacts to the environment from the pluming oil.

On April 29, 2013, the Coast Guard established this regulated navigation area with an interim rule and request for comments, pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C.(b)) (78 FR 24987). This regulation was later amended on June 11, 2013 (78 FR 34894), to correct the exact location of regulated area above the containment dome. The Coast Guard received two comments on this rulemaking, discussed in more detail below. The Coast Guard did not hold a public meeting and no public meeting was requested.

#### B. Basis and Purpose

The Coast Guard's basis for this rule includes 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3706, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295,

116 Stat. 2064; and Department of homeland Security delegation No. 0170.1. The Purpose of the rule is to establish a regulated navigation area for the protection of oil spill containment measures in the Gulf of Mexico.

#### C. Discussion of Comments, Changes and the Final Rule

The Coast Guard received two comments regarding this rulemaking. One comment was from the Department of the Interior noting that the Department reviewed the rule and had no comment. One comment was from a private citizen generally opposed to the regulation. This comment did not contain any specific objections to the rule or recommendations for altering the rule. Despite this general objection, the Coast Guard has decided to continue with the rulemaking and permanently establish this regulated navigation area to protect the environment by limiting damage to the subsea oil containment system.

#### D. Discussion of the Final Rule

This rule creates a regulated navigation area of a 300-foot diameter centered at 28°56'12.619"N, 088°58'10.303"W, and extending the entire water column from the surface to the seabed. Vessels may transit freely through this area, but must not anchor, moor, fish, or otherwise loiter in the area, unless they have been granted special authorization by the Captain of the Port New Orleans. This regulated navigation area will be in effect from the date this rule is published in the Federal Register until cancelled by the District Commander.

#### D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

##### 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. Those impacts on navigation users are expected to be minimal because the enforcement of this RNA does not prohibit vessels from transiting through the area described above. This RNA prohibits only the anchoring, mooring, fishing, or loitering of vessels within the 300-foot diameter section of the protected area.

##### 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small business, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental

jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to anchor, moor, fish, or loiter in the regulated area. This regulated navigation area will not have a significant economic impact on a substantial number of small entities for the following reasons. The establishment of this RNA encompasses a limited area of the Gulf of Mexico and there will be minimal to no impact to commercial vessel traffic. This RNA only prohibits vessels from anchoring, mooring, fishing, or loitering in the area described above. Transiting through the above described area is authorized and notification of the enforcement of this RNA will be disseminated to the marine community through broadcast notice to mariners.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### 4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in

the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### 8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### 10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety



Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### 11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### 12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

#### 13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### 14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a

significant effect on the human environment. This rule involves establishing a regulated navigation area of a 300-foot diameter, extending the entire water column from the water surface to the seabed. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (Water), Reporting and recordkeeping requirements, Security Measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 165.840 to read as follows:

§165.840 Regulated Navigation Area, Gulf of Mexico:  
Mississippi Canyon Block 20, South of New Orleans, LA.

(a) Location. The following area is a Regulated Navigation

Area: A 300-foot diameter area at the water surface centered on the following coordinates: 28°56'12.619"N, 008°58'10.303"W, and extending the entire water column from the surface to the seabed.

(b) Regulations.

(1) In accordance with the general regulations in §165.11 of this part, all vessels are prohibited from anchoring, mooring, fishing, or otherwise loitering in the above described area except as authorized by the Captain of the Port, New Orleans.

(2) Persons or vessels requiring deviations from this rule must request permission from the Captain of the Port New Orleans. The Captain of the Port New Orleans may be contacted by telephone at (504) 365-2200.

Dated: September 16, 2013

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KEVIN S. COOK

Rear Admiral, U.S. Coast Guard

Commander, Eighth Coast Guard District

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Date: 09/26/2013]